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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
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13 CALIFORNIA PRO-LIFE COUNCIL,
14 INC.,

15 Plaintiff,

16 v.

NO. CIV S-00-1698 FCD GGH

MEMORANDUM AND ORDER

17 LIANE RANDOLPH, in her
18 official capacity as Chairman
of the Fair Political
Practices Commission, et al.,

19 Defendants.
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21 This case arises out of plaintiff's, California Pro-Life
22 Council's ("CPLC"), claims that certain reporting and disclosure
23 provisions in California's Political Reform Act ("PRA"), Cal.
24 Gov't Code §§ 81000, et seq., violate the First and Fourteenth
25 Amendment rights of CPLC and similar groups who, among other
26 activities, expressly advocate for and against the passage of
27 ballot measure initiatives. Defendants asserted that California
28 has a compelling government interest in requiring such

1 disclosures and that the provisions are narrowly tailored to
2 advance that interest. On February 28, 2005, the court issued
3 its Memorandum and Order, denying plaintiff's motion for summary
4 judgment and granting defendants' motion for summary judgment.
5 Subsequently, plaintiff appealed.

6 On November 14, 2007, the Ninth Circuit Court of Appeals
7 filed its decision and judgment in this case. The Ninth Circuit
8 affirmed in part, reversed in part, and remanded. The parties
9 submitted a Joint Status Report on January 29, 2008, in addition
10 to separate proposed orders. Subsequently, the parties submitted
11 supplemental briefing. Both plaintiff and defendants agree that
12 the terms of the final judgment in this case are controlled by
13 the Ninth Circuit's holding. As such, and for purposes of
14 judicial economy, the parties have agreed that the resolution of
15 the remaining issues on remand may occur without further motion
16 practice.¹

17 BACKGROUND

18 On August 8, 2000, CPLC filed its initial complaint with
19 this court, which was supplanted by an amended verified complaint
20 filed September 27, 2000. The essence of CPLC's ten-count
21 Amended Verified Complaint ("complaint" or "AVC") is that Cal.
22 Gov't Code §§ 82031 and 82013(a) and (b) Cal. Code Regs. tit. 2,
23 §§ 18225(b) and 18215(b), violate CPLC's First and Fourteenth
24 Amendment rights by subjecting them to onerous reporting
25 requirements for engaging in express advocacy of ballot measures.

26 ¹ Defendants agreed to this procedure on the condition
27 that this court issues an order setting forth in detail the
28 resolution of each of plaintiff's claims in the Verified Amended
Complaint consistent with the Ninth Circuit's opinion.

1 By order filed October 24, 2000, this court dismissed Counts
2 1 and 3 for lack of standing to challenge the PRA's regulation of
3 candidate advocacy. The court dismissed Counts 2, 4, and 6 for
4 failure to state a claim pursuant to Rule 12(b)(6). The court
5 dismissed Counts 5 and 10 (vagueness challenges) only to the
6 extent they were directed to regulation of communications
7 involving candidates and mere discussion of ballot measure
8 initiatives. Counts 5 and 10 survived the motion to dismiss to
9 the extent they were directed at express ballot measure advocacy.
10 However, by subsequent order dated January 22, 2002, the court
11 granted defendants' motion for summary judgment as to the
12 remainder of Counts 5 and 10, holding that plaintiffs had not
13 demonstrated a credible threat of prosecution and thus, the
14 matter was not ripe for review. Counts 7, 8, and 9 were
15 dismissed by stipulation of the parties.

16 CPLC appealed both the Court's October 24, 2000 order and
17 the January 22, 2002 order. The Ninth Circuit affirmed this
18 court's dismissal of Counts 1 and 3, holding that CPLC "does not
19 have standing to argue that the definition of 'independent
20 expenditure' is unconstitutionally vague as applied to its
21 candidate advocacy" because CPLC "faces no credible threat of
22 prosecution for its candidate advocacy." California Pro-Life
23 Council, Inc. v. Getman, 328 F.3d 1088, 1096 (9th Cir. 2003).
24 However, the Ninth Circuit reversed this court's grant of summary
25 judgement of Counts 5 and 10 on ripeness grounds. The court held
26 that CPLC could challenge the allegedly vague definition of
27 "independent expenditure" as it related to CPLC's express ballot
28 measure advocacy because CPLC suffered a "constitutionally

1 sufficient injury of self-censorship rendering its vagueness
2 challenge . . . justiciable." Id. at 1093. Rather than remand
3 CPLC's vagueness challenge to the "independent expenditure"
4 definition, the Ninth Circuit addressed the merits, noting that
5 the issue had been fully briefed by the parties and strenuously
6 advocated at oral argument. Id. at 1096 n.5. The court
7 concluded that the definition, as narrowly defined by the
8 California appellate court in Governor Gray Davis Committee v.
9 American Taxpayer Alliance, 102 Cal. App. 4th 449 (2002), was not
10 unconstitutionally vague. Getman, 328 F.3d at 1100. Lastly, the
11 Ninth Circuit addressed Counts 2, 4, and 6, "CPLC's more general
12 challenge to the PRA's regulation of ballot measure advocacy."
13 Id. at 1100. The court concluded that the PRA's disclosure
14 provisions burden protected First Amendment speech and therefore,
15 must satisfy strict scrutiny. The Circuit court remanded,
16 stating that it was for this court to determine in the first
17 instance whether the state's interest was in fact compelling, and
18 whether the challenged PRA provisions were narrowly tailored to
19 advance that interest. Id. at 1107.

20 On remand, the parties filed cross-motions for summary
21 judgment. By order dated February 25, 2005, this court denied
22 CPLC's motions for summary judgment and granted defendants motion
23 for summary judgment. The Court held that (1) California has a
24 compelling information interest in the PRA's disclosure
25 provisions and (2) the record-keeping, reporting, and
26 organizational obligations were narrowly tailored to that
27 compelling interest. CPLC appealed the judgment.
28

1 On November 14, 2007, the Ninth Circuit affirmed in part,
2 reversed in part, and remanded. California Pro-Life Council,
3 Inc. v. Randolph, 507 F.3d 1172 (9th Cir. 2007). The Ninth
4 Circuit concluded that California had met its burden of
5 demonstrating (1) a compelling interest in the disclosure of
6 funding sources for express ballot measure advocacy and (2) that
7 the definition of "contribution" is narrowly tailored to that
8 compelling interest. Id. at 1183-87. However, the Ninth Circuit
9 held that California failed to demonstrate that the PRA's
10 imposition of political action committee-like requirements on a
11 group like CPLC were narrowly tailored to that same interest.
12 Id. at 1187-89.

13 **FINDINGS**

14 Based upon the conclusions reached by the Ninth Circuit in
15 conjunction with the prior holdings of this court, plaintiff's
16 claims alleged in the ten-count AVC are resolved as follows:

17 Count One: The court's judgment dismissing Count One was
18 affirmed, on other grounds, by the Ninth Circuit's decision in
19 California Pro-Life Council, Inc. v. Getman, 328 F.3d 1088, 1096
20 (9th Cir. 2003).

21 Count Two: The court's judgment granting defendant's motion
22 for summary judgment on Count Two was affirmed by the Ninth
23 Circuit's decision in California Pro-Life Council, Inc. v.
24 Randolph, 507 F.3d 1172, 1180-87 (9th Cir. 2007).

25 Count Three: The court's judgment dismissing Count Three
26 was affirmed, on other grounds, by the Ninth Circuit's decision
27 in Getman, 328 F.3d at 1096.

1 Count Four: The court's judgment granting defendant's
2 motion for summary judgment on Count Two was affirmed by the
3 Ninth Circuit's decision in Randolph, 507 F.3d at 1180-87.

4 Count Five: The court's judgment regarding Count Five was
5 affirmed, on other grounds, by the Ninth Circuit's decision in
6 Getman, 328 F.3d at 1096-1100.

7 Count Six: The only claim by plaintiff that is subject to
8 the remand order is Count Six. Plaintiff CPLC is entitled to
9 declaratory judgment and injunctive relief based upon the Ninth
10 Circuit's holding that CPLC, and groups like CPLC, cannot be
11 required to comply with political committee-like requirements
12 beyond disclosure of the identities of persons funding
13 independent expenditures made by CPLC to support or oppose
14 qualification or passage of ballot measures. Randolph, 507 F.3d
15 at 1187-90. The "full panoply of regulations that accompany
16 status as a political committee under the Act," which the Ninth
17 Circuit held were not narrowly tailored, include mandated
18 registration, formal termination procedures, periodic reporting,
19 and heightened recordkeeping requirements. Id. at 1189; (see
20 also Defs.' Supplemental Mem., filed Feb. 22, 2008, at 2-3).²

21 Count Seven: The parties stipulated to the dismissal of
22 Count Seven. See Randolph, 507 F.3d at 1175.

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25 ² The court agrees with defendants' assertion that while
26 the Ninth Circuit held that "the states interest in disclosure [
27 can be met in a manner less restrictive than imposing the full
28 panoply of regulations that accompany status as a political
action committee," id. at 1189, the Randolph court did not
explicitly conclude that any one of these requirements has been
held unconstitutional. (Def.'s Supplemental. Mem. at 4).

Count Nine: The parties stipulated to the dismissal of Count Nine. See Randolph, 507 F.3d at 1175.

Count Ten: The court's judgment regarding Count Ten was affirmed, on other grounds, by the Ninth Circuit's decision in Getman, 328 F.3d at 1096-1100.

CONCLUSIONS

Consistent with the Ninth Circuit's decisions and this order, CPLC is entitled to judgment in its favor on Count Six because defendants have failed to demonstrate how the additional political committee-like requirements are narrowly tailored to advance its compelling governmental interest. See Randolph, 507 F.3d at 1189-90. Defendants are permanently enjoined from enforcing these types of provisions against CPLC and groups like CPLC.³

IT IS SO ORDERED.

DATED: March 12, 2008

Paul C. Emery

FRANK C. DAMRELL, Jr.
UNITED STATES DISTRICT JUDGE

3 Defendants contend that injunctive relief is unnecessary in this case because the Fair Political Practices Commission instituted emergency regulations to address the Ninth Circuit's decision in Randolph on December 14, 2007. The Ninth Circuit remanded this case for orders consistent with its opinion. Now defendants seek the court to assess the validity of emergency regulations that were neither before the Ninth Circuit nor extensively briefed by the parties. The validity of similar regulations was the gravamen of the initial complaint in this action. The court will not summarily validate these subsequent emergency regulations. As such, the court enters injunctive relief in accordance with the Ninth Circuit's order and does not comment upon the constitutionality of the current emergency regulations proffered by defendants.